

Auckland Regional Public Health Service

Rātonga Hauora ā Iwi o Tamaki Makaurau



Waitemata
District Health Board
Best Care for Everyone



Working with the people of Auckland, Waitemata and Counties Manukau

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27 June 2018

David Robinson
Wine Loft Limited (Vikki Lane Bar & Kitchen)
C & A Accounting Services Limited
12a Jack Conway Avenue, Manukau,
Auckland

Dear Mr Robinson,

Smoke-free Environments Act 1990 – Open and Internal areas – Vikki Lane Bar & Kitchen 2 Graham Street, Auckland Central, Auckland.

On 13 June 2018 I received a complaint that smoking was taking place in an internal area of your premises, Vikki Lane Bar & Kitchen.

This complaint falls under Section 12, Part 1 of the Act.

12 Smoking on licensed premises

- (1) The licensee of any licensed premises must take all reasonably practicable steps to ensure that no person smokes at any time in a part of the premises that is not an open area.
- (2) Subsection (1) does not prevent the licensee of any licensed premises from prohibiting smoking in a part of the premises that is an open area.
- (3) No person may smoke at any time in a part of any licensed premises that is not an open area.

Section 2 of the Act defines an 'internal area' in relation to any premises as *"an area within or on the premises or vehicle that, when all its doors, windows, and other closeable openings are closed, is completely or substantially enclosed by—*

- (a) *a ceiling, roof, or similar overhead surface; and*
- (b) *walls, sides, screens, or other similar surfaces; and*
- (c) *those openings"*

The Act defines an "open area" as a part of a premises that is not an "internal area."

On 22 June 2018, at approximately 11:40 am, I met with you at Vikki Lane Bar & Kitchen, and discussed the nature of the complaint. During this meeting I also informed you that I considered the smoking space within your licenced area to be substantially enclosed. This is because the area is enclosed by walls and a glass roof that covers the entirety of the lane. **Therefore it as an 'internal area' for the purposes of the Act. This means smoking in the area is prohibited at all times.**

During my inspection of Vikki Lane Bar & Kitchen, the following were noted:

- 1) At least 4 people were seen smoking inside your licenced area within the lane.
- 2) You were sitting with at least two smokers inside this licenced area within the lane.
- 3) Ashtrays were placed on at least 11 tables inside the licenced area, within the lane.

Please note that a licensee who fails to comply with section 12 of the Act commits an offence.

Please provide a written response to this office by 11 July 2018 to advise me of the action you have taken to ensure the area remains smoke-free. Smoke-free Enforcement Officers will continue to monitor your premises for compliance. Any breaches found may result in enforcement proceedings against you by the Ministry of Health.

For further guidelines on open and internal areas, please visit: <https://www.health.govt.nz/our-work/preventative-health-wellness/tobacco-control/smokefree-environments-legislation/internal-and-open-areas-under-smoke-free-environments-act-1990>

Disclaimer

The above assessments of the area in question at Vikki Lane Bar & Kitchen were completed using the Ministry of Health's guidance for determining an 'open area'.

When the Ministry is considering whether an area is internal or open, it looks at the following factors:

1. Does the space have a roof? If not, then by definition it is an 'open area'.
2. Does the space have only one wall and a roof? If yes, then in all likelihood it will be an 'open area'.
3. If the space has three walls and a roof, it may not / probably will not meet the 'open area' definition.
4. The most important question to ask is 'what would a reasonable person say about this area?' Would a reasonable person consider it to be 'open' or 'internal'?

Another factor to consider:

- Permeability of walls/sides/screens/ceiling/roof/overhead surface will generally be assessed based on their ratio of open/closed surfaces. However, the overall area will still need to pass 'what would a reasonable person say about this area' test.

All the factors will be considered in the context of the purpose of the provision of the Act – 'to prevent the detrimental effects of other people's smoking on the health of people in workplaces, or in certain public enclosed areas, who do not smoke or do not wish to smoke there'.

All employers/proprietors should satisfy themselves that any smoking area would meet the 'reasonable person' test outlined above.

Please note that the Ministry reserves the right to exercise any of the enforcement powers conferred on it under the Act in respect of any premises constructed or operated in a manner that differs materially from the information set out above.

Nothing in this letter limits or affects your obligations under any other enactment or bylaw, including the Health and Safety in Employment Act 1992. The Ministry does not accept any liability or responsibility for any act or omission, or any damage or loss resulting from any act or omission, done or omitted in reliance, in whole or part, on this letter.

This letter is not a substitute for independent professional advice. If you wish to challenge any of the findings set out above, the Ministry invites you to provide written details of the further factors you would like it to consider or omit from consideration. This invitation is without prejudice to the Ministry's right to exercise any of the enforcement powers conferred on it under the Act.

Should you require further assistance or information regarding the Smoke-free Environments Act please contact me at Auckland Regional Public Health Service on (09) 623 4600 extension 27183.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Peter Aye', with a small blue dot to its right.

Peter Aye
Smoke-free Enforcement Officer

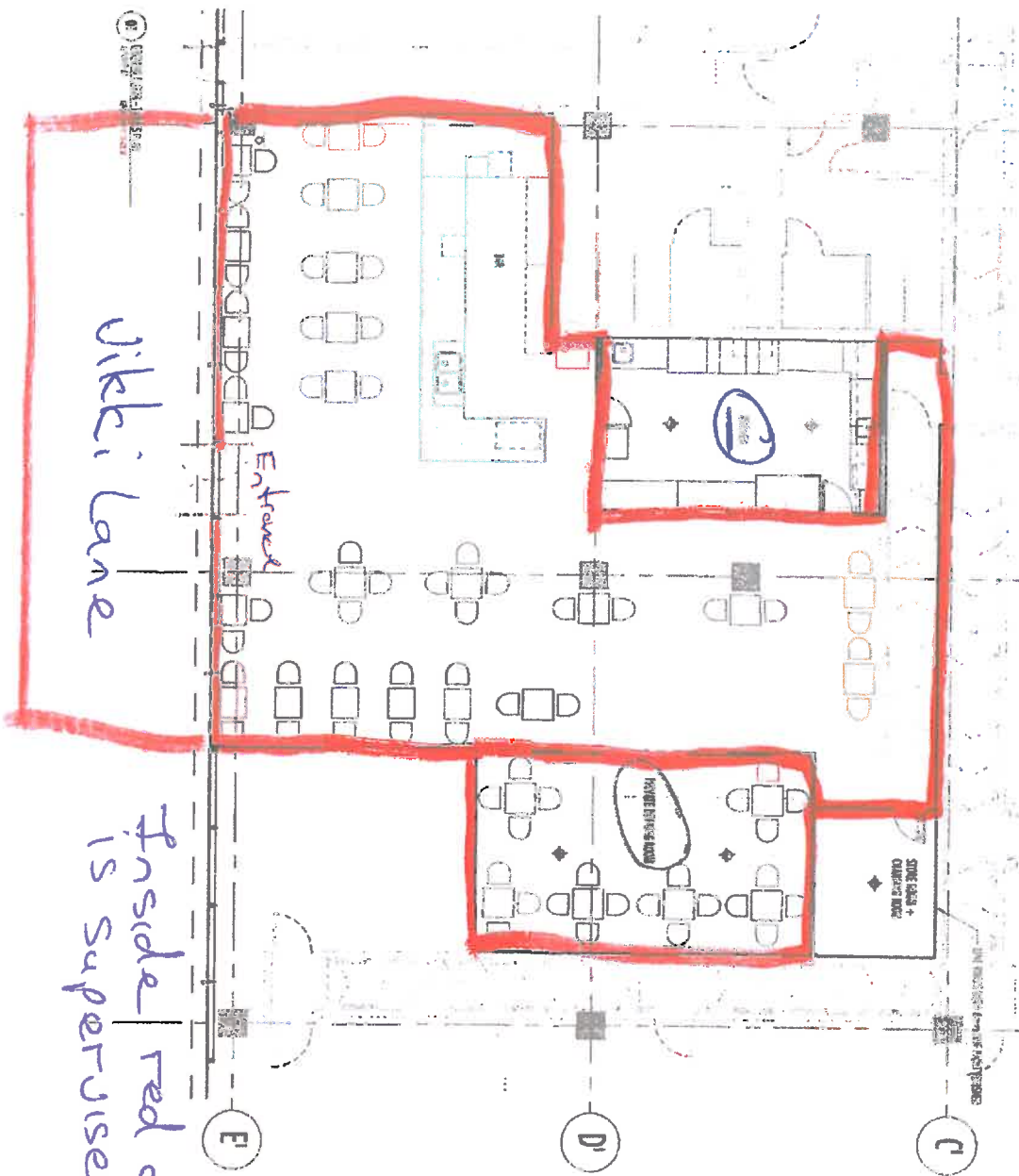
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